

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

MARCUS GANZIE,)	
)	
Plaintiff,)	Case No. 7:02cv00716
)	
v.)	OPINION AND ORDER
)	
SGT. BARTON, ET AL.,)	By: James P. Jones
)	Chief United States District Judge
Defendants.)	

Plaintiff Marcus Ganzie, a Virginia inmate proceeding pro se, brings this action pursuant to 42 U.S.C.A. § 1983 (West 2003). The only claim remaining is one of excessive force and deliberate indifference against defendant R.C. Greenfield stemming from an incident at Red Onion State Prison on June 12-14, 2000. By order entered August 25, 2005, the court denied Greenfield's Motion to Dismiss and directed Greenfield to file any further dispositive motions within thirty days of the entry of that order. On October 17, 2005, Greenfield filed his Answer to the plaintiff's Complaint. Trial is scheduled to begin on February 15, 2006. The case is now before the court on Greenfield's Motion for Summary Judgment, filed November 11, 2005.

Under Rule 56 of the Federal Rules of Civil Procedure, a party against whom a claim is asserted may at any time move the court for summary judgment in that party's favor. Fed. R. Civ. P. 56(b). However, the court may set reasonable time limitations for filing pretrial dispositive motions. *See In re School Asbestos Litigation*, 977 F.2d 764, 793-94 (3d Cir. 1992). Accordingly, if parties have been warned that they must make all such motions before a certain time and do not do so, "they have waived their right to summary adjudication." *Id.* at 794.

In this instance, Greenfield was directed to file all dispositive motions in this matter by September 25, 2005. However, Greenfield did not file the instant motion until November 11, 2005. Accordingly, because Greenfield's motion is untimely and he has failed to establish cause to justify this delay, I find that he has waived his right to summary adjudication in this matter.

It is therefore **ORDERED** that Greenfield's motion for summary judgment is **DENIED**.

ENTER: January 9, 2006

/s/ JAMES P. JONES
Chief United States District Judge